Supreme Court, U.S.
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No. 82-911

In the

Supreme Court of the United States

OCTOBER TERM, 1982

BETTY SANDER HARVEY,

Petitioner,

vs.

ROBERT E. BARD,

Respondent.

BETTY SANDER HARVEY,

Petitioner,

vs.

ROBERT E. BARD and BATES, DEPREE, BARD & WILSON,

Respondents.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASES

Although Petitioner's statement of the cases is insufficient and argumentative, the facts underlying the two cases are completely set forth in the respective orders of the Appellate Court of Illinois, copies of which are annexed to the Petition for Writ of Certiorari as Appendices A and C, and need not be restated here. One important fact does, however, require clarification. Petitioner's five-count legal malpractice and two-count breach of contract claim against Respondents Robert E. Bard and Bates, DePree, Bard & Wilson, *Harvey* v. *Bard, et al.*, No. 80 L 14172, Appellate Court No. 81-781, was not, as Petitioner contends, subjected to a directed verdict by the trial court. Petition for Writ of Certiorari, p. 5.

Rather, that action was properly dismissed by the trial court upon Respondents' motion pursuant to then section 48(d) of the Illinois Civil Practice Act, Ill.Rev.Stat. ch. 110 §48(d), now section 2-619(d) of the Illinois Code of Civil Procedure, Ill.Rev.Stat. ch. 110 §2-619(d). That section provides that an action may be involuntarily dismissed when the cause of action is barred by a prior judgment. It was the dismissal of the legal malpractice action, as affirmed by the Appellate Court of Illinois and refused review by the Supreme Court of Illinois that is, in part, the subject of this Petition.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari should be denied as to both cases because it presents no substantial federal question as to either case and because the decisions below rest on adequate and independent state law grounds.

ARGUMENT

Both cases that form the basis of this matter arose out of the legal representation of Petitioner by Respondent Bard. In *Bard* v. *Harvey,* 77 M1 109422, Appellate Court No. 80-2773, (hereinafter the "fees case"), Respondent Bard sued Petitioner for unpaid legal fees. After a jury trial, Respondent Bard was awarded judgment notwithstanding the verdict. In the subsequently filed case of *Harvey* v. *Bard, et al.* (hereinafter the "legal malpractice case"), Petitioner sued for legal malpractice and breach of contract. Her lawsuit was dismissed under the doctrine of *res judicata,* all issues regarding Respondent's legal representation of Petitioner having been adjudicated in the fees case.

The Illinois Appellate Court affirmed both the judgment notwithstanding the verdict in the fees case and the dismissal of the legal malpractice action without even addressing any of the purported federal questions raised by Petitioner regarding Seventh Amendment protections of the right to trial by jury, due process or equal protection. That Court correctly understood that the issues raised in both the fees case and the legal malpractice case were governed solely by well-established Illinois law, *see Paul* v. *Davis,* 424 U.S. 693 (1976), and that Petitioner's attempts to frame constitutional questions were meritless, if not frivolous. Indeed, the Appellate Court of Illinois found Petitioner's appeals in both actions so wholly unremarkable and without merit that it disposed of both appeals by unpublished orders pursuant to Illinois Supreme Court Rule 23, Ill.Rev.Stat. ch. 110A §23.

Petitioner now presents no substantial federal question nor does she demonstrate that the decisions below were not based on adequate interpretations of state law by state courts, independent of federal constitutional concerns. *Fox Film Corp.* v. *Muller,* 296 U.S. 207, 210 (1935); *see also Murdock* v. *City of Memphis,* 87 U.S. 590, 629 (1875) ("merely *raising*" federal question is insufficient) (emphasis in original). It is, of course, settled beyond dispute that neither a judgment notwithstanding the verdict nor a dismissal of a lawsuit violates any constitutional principle. *See Pedrick* v. *Peoria & Eastern Railroad Co.,* 37 Ill.2d 494, 229 N.E.2d 504 (1967); *Galloway* v. *United States,* 319 U.S. 372 (1943); *Bauscher* v. *City of Freeport,* 103 Ill.App.2d 372, 243 N.E.2d 650 (1968) (dismissal of a lawsuit does not violate constitutional principles); *see also Parklane Hosiery Co., Inc.* v. *Shore,* 439 U.S. 322 (1979) (principle of collateral estoppel does not offend Seventh Amendment).

In short, the Petition satisfies *none* of the standards of Supreme Court Rule 17 for the granting of a writ of certiorari to review a state court judgment. The Illinois courts have not decided a federal question in a way which conflicts with the decision of another state or federal court. Nor have these courts decided an important question of federal law which has not been, but should be, settled by this Court.

Moreover, it is a long-established principle that this Court will not review the decision of a state court which presents no substantial federal question. *Rice* v. *Sioux City Memorial Park Cemetery,* 349 U.S. 70 (1955); *Zucht* v. *King,* 260 U.S. 174 (1922); *Millingar* v. *Hartupee,* 73 U.S. (6 Wall.) 258 (1867). It is equally well settled that

the bare assertion of a constitutional claim utterly without foundation, or one so clearly and conclusively settled by prior decisions of this Court so as to admit of no further argument, presents no substantial federal question. *Equitable Life Assurance Society* v. *Brown,* 187 U.S. 308, 314 (1902). Petitioner's assertion here that constitutional questions are raised by the actions of the Illinois courts is groundless and unsupportable, being merely an attempt to seek this Court's review of questions of state law. *See Abbott* v. *National Bank of Commerce,* 175 U.S. 409 (1899), where this Court declared that the dismissal of a libel action on grounds of privilege raised no Fourteenth Amendment issue. *See also Boddie* v. *Connecticut,* 401 U.S. 381, 378 (1971) (no deprivation of due process to enter default judgment for failure to appear or failure to comply with procedural rules).

In essence, Petitioner makes the bare assertion that the decisions of the Appellate Court are erroneous in their application of Illinois law and, therefore, deprive her of her constitutional rights. But Illinois law is both well-settled and clear, and the decisions of the Appellate Court in these cases were correct. *See Howell* v. *Goodrich,* 69 Ill. 556 (1873). Under these circumstances, review by this Court is plainly unwarranted.

CONCLUSION

The Petitioner suggests no valid reason why this Court should review either the judgment notwithstanding the verdict entered against her in the fees case or the dismissal of her legal malpractice case. Petitioner's status

as an aggrieved litigant whose claim has been rejected on the basis of settled legal rules is no different than that of numerous other disappointed suitors. Petitioner's unfounded assertions of error by the Appellate Court of Illinois do not suffice to invoke this Court's jurisdiction or to impose yet another round of appellate review upon these Respondents. The Supreme Court of Illinois did not accept Petitioner's appeals. This Court should similarly refuse Petitioner's request for review. The well considered decisions of the Appellate Court of Illinois should be allowed to stand as the final disposition of this action. For all of the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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